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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA

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9 MARTIN MANZO-GONZALEZ,) No. CV-F-04-6094 OWW
10) (Nos. CR-F-03-5239 OWW; CR-
11) F-03-5240 OWW)
12 Petitioner,) ORDER GRANTING MOTION TO
13 vs.) VACATE, SET ASIDE OR CORRECT
14) SENTENCE PURSUANT TO 28
15) U.S.C. § 2255, VACATING
16) SENTENCE, DIRECTING FEDERAL
UNITED STATES OF AMERICA,) DEFENDER TO APPOINT COUNSEL,
Respondent.) AND DIRECTING U.S. MARSHAL
_____) TO RETURN PETITIONER FOR RE-
SENTENCING ON MONDAY,
DECEMBER 4, 2006 AT 10:00
A.M. IN COURTROOM 7

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20 On August 13, 2004, petitioner Martin Manzo-Gonzalez filed a
21 timely motion to vacate, set aside or correct sentence pursuant
22 to 28 U.S.C. § 2255.

23 Petitioner was charged in No. CR-F-03-5239 with being a
24 deported alien found in the United States in violation of 8
25 U.S.C. § 1326. Petitioner was charged in No. CR-F-03-5240 with
26 one count of conspiracy to possess and distribute a listed

1 chemical, pseudoephedrine, knowing that the pseudoephedrine would
2 be used to manufacture a controlled substance in violation of 21
3 U.S.C. §§ 841(a)(1) and 846; and three counts of distribution of
4 methamphetamine in violation of 21 U.S.C. § 841(a)(1).

5 Petitioner was represented in both cases by Steven Crawford. On
6 October 24, 2003, by written Plea Agreement, petitioner pleaded
7 guilty to being a deported alien found in the United States and
8 to one count of distribution of methamphetamine. The Plea
9 Agreement provided in pertinent part:

10 **IV. Joint agreements between the parties.**

11 The parties stipulate that the drug quantity
12 attributable to the defendant's offense of
conviction and its relevant conduct is the
methamphetamine distributed by the defendant
on May 13, 21, and 28, 2003 as alleged in
Indictment No. Cr.F 03-5240; more
14 specifically approximately 127 grams (gross
weight) of a mixture or substance containing
15 methamphetamine. The parties stipulate and
agree to substitute the net weight (gross
weight reduced by any packaging weight) if
that net weight is lower than 127 grams.
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19 **VI. Factual Basis for Plea Agreement.**

20 The defendant will plead guilty because he is
in fact guilty of the crimes to which he will
admit guilt. The defendant also agrees that
his guilty plea will be based upon the
following facts, although he acknowledges
that, as to other facts, the parties may
disagree.
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24 ...

25 Defendant further agrees that the following
are true and correct facts as to case CrF 03-
5240 OWW:
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1 On or about May 13, 2003 in the
2 County of Merced, State and Eastern
3 District of California, defendant
4 Martin Manzo Gonzalez distributed
5 methamphetamine to another person
6 or persons. The amount distributed
7 was more than fifty (50) grams of a
8 mixture or substance containing
9 methamphetamine. At all relevant
10 times, defendant Martin Manzo
11 Gonzalez knew he was distributing
12 methamphetamine and that
13 methamphetamine is a controlled
14 substance.

15 Petitioner was sentenced on January 12, 2004 in both cases to 120
16 months, to run concurrently, and a 60 month term of supervised
17 release. Petitioner did not file a notice of appeal.

18 In moving for relief pursuant to Section 2255, petitioner
19 asserts the following claims:

20 1. Whether counsel was ineffective for
21 failing to object to the sentence on the
22 ground that the Sentencing Guidelines and
23 procedures used to determine the sentencing
24 facts were unconstitutional under *Apprendi v.*
25 *New Jersey*.

26 2. Whether counsel was ineffective because
27 of "lack of research and investigation of the
28 law of Blakely upon failure to notice Blakely
29 future impact which was granted certiorari
30 during the petitioner's proceedings".

31 3. Whether counsel's "failure to pursue
32 and/or notice his client of what the law of
33 Apprendi was render the plea of guilty as
34 void upon lack of information regarding the
35 quantity as element of the offense before the
36 entry of plea of guilty."

37 4. Whether petitioner's "direct appeal
38 waiver was unknowingly and unvoluntarily
39 [sic] made but procured through counsel
40 constitutionally ineffective during the
41 negotiations upon lack of investigation of
42 the case as a whole".

1 5. Whether the guilty plea "was involuntary
2 and unknowing [sic] upon counsel ineffective
3 assistance pursuant lack [sic] of knowledge
4 of the law in reference to the facts of the
5 case in violation of movant due process".

6 6. Whether the direct appeal waiver "was
7 unknowingly and unintellignet [sic] and
8 unvoluntarily [sic] made due to counsel
9 ignored request from his client to files
10 [sic] a notice of appeal and direct appeal
11 acknowledged actually the petitioner's
12 sentence is illegal which doesn't include a
13 waiver of one illegal sentence under the
14 facts of the present case".

15 7. Whether counsel was ineffective "upon
16 lack of objection and contention that the
17 government did not proved [sic] the
18 quantities of methamphetamine which movant's
19 [sic] admitted to were 'actual
20 methamphetamine' as opposed to a mixture
21 containing methamphetamine for sentencing
22 purposes and whether it was an [sic]
23 defendant or government burden for sentencing
24 designs".

25 8. Whether petitioner's guilty plea "was
26 affected as consequence of government
27 Brady/Giglio/Agurs violations before the
28 entry of plea of guilty and due to counsel
29 [sic] lack of investigation and consultation
30 with his client".

31 9. Whether petitioner "was entitled to
32 manipulation or sentencing entrapment
33 contention and was deprived due to counsel
34 lack of investigation and government
35 disclosure violations".

36 In responding to this motion, the United States concedes
37 that petitioner is entitled to relief with respect to his claim
38 no. 7 above that he was improperly sentenced to the mandatory
39 minimum of ten years imprisonment based on the distribution of
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1 127 grams of a mixture or substance containing methamphetamine.¹

2 Because of this concession, resolution of the other grounds
3 for relief asserted in the motion is not necessary. When
4 petitioner is returned for re-sentencing, counsel for petitioner
5 may raise any issues deemed appropriate at that time.

6 ACCORDINGLY, as set forth above:

7 1. Petitioner Martin Manzo-Gonzalez's petition to vacate,
8 set aside or correct sentence pursuant to 28 U.S.C. § 2255 is
9 GRANTED and Petitioner's sentence is VACATED.

10 2. The Federal Defender is ordered to appoint counsel to
11 represent petitioner.

12 3. The U.S. Marshal is ordered to return petitioner to the
13 Eastern District of California, Fresno, for re-sentencing in
14 Courtroom 7 on Monday, December 4, 2006 at 10:00 a.m.

15 IT IS SO ORDERED.

16 Dated: October 13, 2006
17 668554

/s/ Oliver W. Wanger
18 UNITED STATES DISTRICT JUDGE

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23 ¹21 U.S.C. § 841(b)(1)(A)(viii) imposes a mandatory minimum
24 sentence of ten years for the distribution of "500 grams or more of
25 a mixture or substance containing a detectable amount of
methamphetamine ...". Section 841(b)(1)(B)(viii) imposes a
mandatory minimum sentence of five years for the distribution of
"50 grams or more of a mixture or substance containing a detectable
amount of methamphetamine."